

OFF-RESERVATION ENVIRONMENTAL IMPACTS ORDINANCE
Of The Hoopa Valley Tribe

Title 64

ORDINANCE NO. 03-00

DATE APPROVED: July 20, 2000

SUBJECT: Ordinance providing for the preparation, circulation and consideration by the Tribe of environmental impact reports concerning potential off-Reservation environmental impacts.

WHEREAS: The Hoopa Valley Tribe adopted its Constitution and Bylaws on June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, confirmed and ratified by the United States Congress in October 1988, in Public Law 100-580, the Hoopa-Yurok Settlement Act, and thereafter amended on June 18, 1996;

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe pursuant to authority expressed in Article V Section 1 of the Constitution;

WHEREAS: The Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and nonmembers of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Tribe and the State of California entered into a tribal-state gaming compact pursuant to the Indian Gaming Regulatory Act (25 U.S.C. ' 2701 *et seq.*) in September, 1999;

WHEREAS: The voters of California approved Proposition 1A on March 7, 2000 thereby amending the California Constitution to authorize the scope of gaming contained in the tribal-state gaming compact;

WHEREAS: The tribal-state gaming compact at Section 10.8 requires the Tribe to Aadopt an ordinance providing for the preparation, circulation, and consideration by the Tribe of environmental impact reports concerning potential off-Reservation environmental impacts of any and all Projects to be commenced on or after the effective date@ of the Compact;

NOW, THEREFORE, BE IT RESOLVED THAT: the enactment of this Ordinance promotes the public health, safety and welfare and is in the public interest;

BE IT FURTHER RESOLVED THAT: the Tribal Council hereby adopts the following Off-Reservation Environmental Impacts Ordinance in order to comply with the requirements of the tribal-state gaming compact.

64.1 SHORT TITLE

This Ordinance shall be known and may be cited as the Off-Reservation Environmental Impacts Ordinance or Title 64.

64.2 SCOPE

This Ordinance shall only apply to the Hoopa Valley Tribe and shall be limited to Projects as defined herein.

64.3 PURPOSE

The purpose of this Ordinance is to comply with the requirements of the tribal-state gaming compact between the State of California and the Hoopa Valley Tribe. It is also the purpose of this Ordinance to provide a means to ensure that significant off-reservation environmental impacts caused by a Project commenced in relation to the Tribe's gaming operation as defined herein are identified and mitigated to the fullest extent possible.

64.4 DEFINITIONS

64.4.1 "Board of Supervisors" means the Humboldt County Board of Supervisors.

64.4.2 "Casino" means the Lucky Bear Casino, or its successor.

64.4.3 "Class III gaming" means the forms of Class III gaming defined as such by IGRA and any regulations promulgated thereunder.

64.4.4 "Compact" means the tribal-state class gaming compact between the Tribe and the State of California and any amendments thereto.

64.4.5 "Council" means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.

64.4.6 "Environmental Impact Report" or "EIR" means any environmental assessment, environmental impact report or environmental impact statement, as the case may be.

64.4.7 "Gaming Activities" means Class III gaming activities authorized under the Compact.

- 64.4.8 "Gaming Facility" means any building in which Class III gaming activities or gaming operations occur, or in which the business records, receipts, or other funds of the gaming operation are maintained (but excluding offsite facilities primarily dedicated to the storage of those records, and financial institutions), and all rooms, buildings, and areas, including parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of Class II gaming (as defined under IGRA) therein.
- 64.4.9 "Gaming Operation" means the business enterprise that offers and operates Class III gaming activities, whether exclusively or otherwise.
- 64.4.10 "IGRA" means the Indian Gaming Regulatory Act, any amendments thereto and all regulations promulgated thereunder.
- 64.4.11 "Off-Reservation" means outside the exterior boundaries of the Hoopa Valley Indian Reservation and as hereafter constituted and within six (6) miles of the exterior boundaries of the Reservation.
- 64.4.12 "Project" means any expansion or any significant renovation or modification of an existing Gaming Facility, or any significant excavation, construction, or development associated with the Tribe's Gaming Facility or proposed Gaming Facility.
- 64.4.13 "Reservation" means the Hoopa Valley Indian Reservation and as hereafter constituted.
- 64.4.14 "Significant effect on the environment" means a substantial or potentially substantial adverse change in any of the physical conditions within the area affected by the Project including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.
- 64.4.15 "State" means the State of California.
- 64.4.16 "Tribe" means the Hoopa Valley Tribe, its departments and entities, including the Lucky Bear Casino.

64.5 NOTICE TO PUBLIC

64.5.1 Prior to the commencement of a Project, the Tribe will:

- (A) Inform the public of the proposed Project by, at a minimum, posting a notice briefly describing the proposed Project in the Neighborhood Facilities Building, at the local market (Ray's) and the United States Post Office; and by publication of said notice in the Tribal newspaper, if any.

- (B) Take appropriate action to initially determine whether the proposed Project will have a significant adverse impact on the off-Reservation environment and either issue a Negative Declaration stating that there will not be a significant adverse impact on the off-Reservation environment; or determine that an Environmental Impact Report ("EIR") will be conducted if the initial study reveals substantial evidence of the potential for significant adverse impact on the off-Reservation environment;
- (C) In order to make the determination required in Section 64.5.1(B), above, the Tribal Environmental Protection Agency or other designated agent shall complete an Environmental Checklist similar to that attached hereto as Appendix A;
 - (1) The Environmental Checklist shall consider all phases of project planning, implementation and operation.
 - (2) After preparation of the Environmental Checklist, the Tribal Environmental Protection Agency or designated agent may consult with the Project applicant to determine if the proposed Project may be revised to avoid or reduce any identified environmental impacts.
 - (a) The Tribal Environmental Protection Agency may issue a Negative Declaration if there is substantial evidence that any significant effects identified in the Environmental Checklist would be avoided or mitigated by revisions agreed to by the Project applicant.
 - (b) A Negative Declaration may be issued in reliance upon an existing Environmental Impact Report prepared for an earlier Project.
- (D) Upon completion of the Environmental Checklist or Environmental Impact Report, the Tribe shall submit any Negative Declaration and supporting documentation or Environmental Impact Report(s), as appropriate, concerning the proposed Project to the State Clearinghouse in the Office of Planning and Research and the Board of Supervisors.

64.6 DETERMINING SIGNIFICANT ENVIRONMENTAL IMPACT

The Environmental Checklist or, if necessary, EIR shall be used to describe, analyze and review the potential significant off-reservation environmental effects of a proposed Project. The EIR shall also be used as a means to identify alternatives to the Project.

64.7 PREPARATION OF ENVIRONMENTAL IMPACT REPORT

Upon a determination that a Project may have a significant adverse impact upon the off-reservation environment, the Tribe, through the Tribal Environmental Protection Agency (TEPA) or other designated agent, shall prepare an Environmental Impact Report.

64.7.1 Each Environmental Impact Report shall go through both a draft and final stage. A draft EIR shall serve as the basis for public review and consultation between the Board of Supervisors and the Tribe. The final EIR is the actual decision-making document to be used by the Tribal Council.

64.7.2 Content of Environmental Impact Report.

The Environmental Impact Report shall address or otherwise include the following:

- A) Table of Contents;
- B) Summary;
- C) Description of project;
- D) Describe the off-reservation environment in the vicinity of the Project as it exists before commencement of the Project, from both a local and regional perspective;
- E) Identify and focus on the significant off-reservation environmental effects of the proposed Project, including indirect and direct significant adverse effects by comparing the actual existing physical conditions to the contemplated post-project conditions;
- F) Describe any significant off-reservation impacts, including those which can be mitigated but not reduced to a level of insignificance;
- G) Describe measures that could mitigate significant adverse off-reservation impacts;
- H) Describe a range of reasonable alternatives to the Project which could feasibly achieve the basic objectives of the Project, including the alternative of "no Project". The alternatives must be considered even if they would frustrate Project objectives or would be more costly. "Reasonable alternatives" includes a range of alternatives necessary to permit a reasoned choice, not every conceivable project alternative.
- I) Discuss the cumulative impacts which may compound or increase other off-reservation environmental impacts.

- J) In the final EIR, comments received in the review process and TEPA's or other designated agent's, responses to those comments.

64.8 CONSULTATION WITH BOARD OF SUPERVISORS

The Council or its designated agent shall, if requested by the Board of Supervisors, meet with the Board of Supervisors to discuss mitigation of significant adverse off-Reservation environmental impacts.

64.9 PUBLIC HEARING

The Council or its designated agent shall conduct at least one public hearing prior to commencement of the Project to provide an opportunity to members of the public residing off-Reservation to make comments regarding the proposed negative declaration or environmental impact report, if any.

64.9.1 Time for Public Hearing

The Public Hearing required by this Section shall be held at least 30 days prior to the commencement of the proposed Project.

64.10 PROGRESS UPDATE

During the duration of the Project, the Tribe shall orally or in writing, including but not limited to publication in the Tribal newspaper or the *Kourier*, and approximately every three (3) months until completion of the Project, generally inform the Board of Supervisors and public of the Project's progress. Failure to inform the Board of Supervisors and public of the progress of a Project shall not be ground for issuance of a peremptory writ of mandate or otherwise create jurisdiction in the Tribal Court.

64.11 MITIGATION OF SIGNIFICANT ADVERSE OFF-RESERVATION IMPACTS

The Tribal Council shall not approve a Project for which an EIR has identified one or more significant environmental impacts unless the Tribal Council makes one or more of the following written findings, supported by substantial evidence in the record:

64.11.1 Changes have been required in the Project which avoid or substantially lessen the off-reservation environmental impacts identified in the EIR;

64.11.2 Such changes are within the responsibility and jurisdiction of the State of California or other local government agency which can and should require them and are not within the jurisdiction of the Tribe;

64.11.3 Specific economic, social or other considerations make infeasible the mitigation measures or Project alternatives identified in the final EIR; or

64.11.4 The benefits of the Project outweigh the unavoidable adverse environmental effects.

64.12 REVIEW OF ORDINANCE WITH STATE

The Tribe and the State may from time to time, meet to review this Ordinance, the Tribe's compliance herewith and Section 10.8 of the Compact to ensure off-Reservation significant adverse environmental impacts resulting from Projects undertaken by the Tribe may be avoided or mitigated.

64.13 TRIBAL COURT JURISDICTION

64.13.1 Exhaustion of Administrative Remedies

To be entitled to seek judicial review of Tribal Council action for alleged violations of this Ordinance, aggrieved parties must first exhaust their administrative remedies by presenting their specific objections to the Tribal Council at the time of the public hearing. If this is not done, then the Court must deny any relief requested for lack of jurisdiction.

64.13.2 Statute of Limitation

- (A) Where the Tribe files a notice of determination that a negative declaration has been prepared, or where an EIR was prepared or certified, 30 days after the filing and posting of the notice;
- (B) Where none of the other statute of limitation periods applies, 45 days after either (1) the Tribal Council's determination to carry out or approve the Project; or (2) commencement of the Project, if the Project is undertaken without a formal decision by the Tribal Council.

64.13.3 Pre-Notice Filing

The plaintiff in an action under this Ordinance shall serve a notice of intent to commence action upon the Tribal Council at least 20 days prior to filing the action. Said notice shall be considered an administrative remedy pursuant to 64.13.1, above.

64.13.4 Exclusive Jurisdiction

The Tribal Court system shall have exclusive jurisdiction to adjudicate actions commenced pursuant to this Ordinance.

64.13.5 Remedies

If after a trial, hearing or remand from an appellate court, a trial court finds that the Tribal Council has violated this Ordinance, the court will issue a peremptory writ of mandate requiring one or more of the following:

- (A) That the Tribal Council's decision be voided;
- (B) That the Tribal Council or the real party in interest suspend all activity pursuant to the decision that could alter the off-reservation environment until the Tribal Council takes steps to comply with this Ordinance; and/or
- (C) That the Tribal Council take specific action to cause the decision to comply with this Ordinance.

64.13.5.1 The trial court shall retain jurisdiction over the matter until it has determined that the Tribal Council has adequately complied with this Ordinance, provided that the Tribal Court cannot direct the Tribal Council to exercise its jurisdiction in any particular way.

64.13.5.2 The Tribal Court is not authorized to, and shall not, award attorney's fees or monetary damages as against the Tribe for violations of this Ordinance.

64.13 EFFECTIVE DATE, AMENDMENT

This Ordinance shall take effect upon its adoption by the Tribal Council. This Ordinance may be amended as provided in accordance with the Legislative Procedures Act, and as hereafter amended.

64.14 SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder shall remain in full force and effect to the maximum extent possible.

64.15 SOVEREIGN IMMUNITY

Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Hoopa Valley Tribe or any of its enterprises, officers, agents, or employees, except to the extent provided for herein. Nothing herein shall authorize the award of monetary damages, attorney's fees or punitive damages as against the Hoopa Valley Tribe or any of its enterprises, officers, agents or employees.

CERTIFICATION

I, the undersigned as Chairman of the Hoopa Valley Tribal Council, do certify that the Hoopa Valley Tribal Council is comprised of eight (8) members of which seven (7) were present constituting a quorum, at a regular meeting thereof, duly and regularly called, noticed, convened and held this July 20, 2000; and that this Ordinance was adopted by a vote of six (6) for; none (0) opposed; and none (0) abstaining, and that since approval, this Ordinance has not been rescinded, amended or modified in any form.

Dated this 20th day of July, 2000.

DUANE J. SHERMAN, SR., Chairman
Hoopa Valley Tribal Council

Attest: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council